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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

*Ex parte* Gallagher

Appeal No. \_\_\_\_\_

Appellant: Brian Gallagher  
Serial No.: 10/780,805  
Filed: February 18, 2004  
Art Unit: 3711  
Examiner: Mark S. Graham  
Title: TRAINING BAT AND METHOD  
Confirmation No.: 1497  
Atty. Docket No.: GALG-09CO

Cincinnati, OH 45202

September 20, 2005

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**REPLY BRIEF**

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Gregory F. Ahrens, Reg. No. 32,957

9-20-05  
\_\_\_\_\_  
Date



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**REPLY BRIEF**

Appellant hereby submits this Reply Brief pursuant to 37 C.F.R. § 41.41.

Appellant respectfully requests reconsideration of the issues on appeal in view of the arguments set forth herein.

The Examiner admits that he doesn't cite the Owen reference for its diameter teaching. Furthermore, the Examiner admits that neither Owen nor Brundage address the batting skill of hand/eye coordination. In an effort to fill the void left by the teachings of Owen and Brundage, the Examiner states that Muhlhausen addresses the skill of hand/eye coordination and teaches a reduced diameter barrel that falls within the claimed range. The obvious deficiency in the Muhlhausen reference is the fact that it does not teach the claimed barrel, transition and handle sections, but rather has a removable rod in the place of the barrel. Curiously, the Examiner states that "these parameters [weight and length] may be varied as needed with Owens'

bat,” but gives no reference or citation to a teaching in the specification of Owen for such variations.

The sentence bridging pages 3-4 of the Examiner’s Answer epitomizes the use of hindsight in place of an actual teaching when it states that “the Examiner considers it well within the realm of the ordinarily skilled artisan to have reduced the diameter of Owen’s bat within the range disclosed by Muhlhausen if it was desired to enhance the training experience by providing for hand/eye coordination training.” The Examiner provides no support for this conclusion.

The Examiner’s statement that “the Appellant has put no limits on ‘conventional’ thus any usable weight and length may be considered ‘conventional’,” is incorrect. The specification at page 13 in Table 1 provides a matrix of length and weight parameters that are identified as being “conventional” and thus the Appellant has put limits on “conventional.” Moreover a § 112 rejection concerning this issue was previously overcome.

The Examiner states on page 4 of the Answer that “obviously however, if one wishes to develop proper hand eye coordination using the technique taught by Muhlhausen they will want to do so with a bat of ‘conventional’ weight and length such as those disclosed by Owen for the training to be of any benefit at all.” This conclusion is unsupported. Muhlhausen addresses the issue of hand/eye coordination with the training bat configuration disclosed therein. Muhlhausen did not utilize a reduced diameter bat having conventional length and weight characteristics as the Examiner boldly concludes would be obvious. Moreover, both the Owen and Brundage patents deal with training bats of conventional length and diameter characteristics that have increased weight for purposes of addressing the skill of wrist and forearm strength. The Examiner has never cited to any specific reference in the prior art nor provided any other plausible reason why a person of ordinary skill in the art would combine prior art references that

deal with completely different baseball skills (i.e., strength on the one hand and hand/eye coordination on the other). Without that, Appellant submits that a *prima facie* case of obviousness has not been made.

**Conclusion**

For all the foregoing reasons and those set forth in the Appellant's Appeal Brief, Appellant respectfully requests favorable resolution of the issues on appeal. Moreover, if any other charges or credits are necessary to complete this communication, please apply them to Deposit Account 23-3000.

Respectfully submitted,  
WOOD, HERRON & EVANS, L.L.P.

Date: 9-20-05

By:   
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